

CIVIL REVISION APPLICATION No 1812 of 1982

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

2. To be referred to the Reporter or not? No @@

5. Whether it is to be circulated to the Civil Judge?
No

FULSING DEVSING

MR KV SHELAT for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 21/12/98

ORAL JUDGEMENT

1. This is landlord's revision under Section 29(2) of the Bombay Rent Control Act, 1947.

2. Brief fact giving rise to this petition are as under :

The landlord revisionist filed Suit for eviction of the respondent from the disputed accommodation on two grounds, firstly that the respondent was in arrears of rent for more than six months which he did not pay within a month of service of Notice of demand. Another ground was that the premises was reasonably and bonafide required by the landlord - revisionist.

3. Before the trial Court the plea that the premises was required reasonably and bonafide by the landlord was given up. The trial Court found that in view of dispute regarding standard rent the decree for eviction could not be passed. It further found that the tenant respondent is entitled to benefit of Section 12(3)(b) of the Rent Act. The standard rent was fixed at Rs.40/- p.m. plus Municipal taxes by the trial Court. In this way the Suit for eviction was dismissed.

4. An Appeal was preferred. The Appellate Court enhanced the standard rent from Rs.40/- to Rs.60/- p.m. exclusive of taxes. The decree for eviction was not granted by the Appellate Court as well. It is, therefore, this revision.

5. In view of dispute regarding standard rent raised by the respondent which was a bonafide dispute the landlord was not entitled to decree for eviction under Section 12(3)(a) of the Bombay Rent Act. The two Courts below committed no illegality in recording finding that the tenant respondent is protected under Section 12(3)(b) of the Bombay Rent Act.

6. Learned Counsel for the revisionist, however, pointed out that in view of admission of the defendant respondent that the standard rent is excessive and it cannot be more than Rs.90/-, the trial Court committed apparent error in fixing the standard rent at Rs.40/- and like error was committed by the appellate Court while slightly enhancing the standard rent to Rs.60/- p.m.

beside the taxes. After going through the judgments of the two courts below it is clear from Para : 3 of the Judgment of the appellate Court that the case of the defendant respondent was that the rate of rent claimed by the landlord at Rs.170/- p.m. is excessive and the standard rent according to the respondent cannot be more than Rs.90/- p.m. Thus, outer limit of standard rent, according to the tenant respondent, could be Rs.90/- p.m. and this fact was ignored by the Courts below. The courts below adopted viamedia. The trial Court fixed standard rent at Rs.40/- p.m. whereas the appellate Court fixed it at Rs.60/- p.m. Both the courts below were guided by principles that the landlord must get some enhancement in reasonable return of investment made by him. The property was purchased by the landlord for Rs.16,000/-. The trial Court fixed the reasonable return at 6 % and since the tenant was in possession of half of the entire property the annual return was fixed at Rs.480/- and on this figure the standard rent was calculated at Rs.40/p.m. The appellate Court enhanced reasonable return to 9% and calculated the same at Rs.1440/-, which was reduced to half at Rs.720/- because the tenant respondent is in possession of only half of the premises and in this way the standard rent was fixed at Rs.60/- p.m. In fixing the standard rent both the Courts below acted on guess work. Learned Counsel for the revisionist has rightly pointed out that the two courts below committed error in ignoring defendant's admission that the reasonable rent can not exceed Rs.90/p.m.

7. After hearing the learned Counsel for the parties and considering the fact that the judgment of the lower Appellate Court was rendered on 23.11.1981 and about 17 years period has passed, the standard rent requires reconsideration especially in view of the fact that there is admission of the defendant that the standard rent cannot be more than Rs.90/- p.m. At this stage learned Counsel for the parties agreed and state that the standard rent may be enhanced at the rate of Rs.75/- p.m. with effect from 1.1.1999 which shall be exclusive of municipal and other taxes and that this enhancement in standard rent shall be prospective and no arrears on this count shall be recoverable by the landlord. It is further agreed and stated that refusal of decree for eviction by the two courts below shall be maintained.

8. In view of the above discussion and the statement in the nature of admission made by the learned Counsel for the parties the revision is partly allowed. The Judgment and decree of the lower Appellate Court is

modified only to this extent that the standard rent from
1.1.1999 shall be Rs.75/- p.m. exclusive of municipal
and other taxes. No order as to costs.

sd/-

(D. C. Srivastava, J.)

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